

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UTICA MUTUAL INSURANCE CO.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:06CV00664 ERW
	)	
BANCINSURE, INC.,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter comes before the Court upon Plaintiff's Expedited Motion to Compel Discovery [doc. #48] and Defendant's Motion for Protective Order [doc. #50]. A hearing was held on December 13, 2006, and the Court heard arguments from the parties on the Motions.

Utica filed this action for equitable contribution against BancInsure, seeking to recover a pro-rata allocation for amounts it paid on the judgment entered against Utica in a claim brought by Heartland Payment Systems, Inc. against Utica and BancInsure in the Missouri Circuit Court. On October 31, 2006, this Court issued an order, which held that BancInsure is not precluded from litigating the issue of what portion of the judgment was for losses due to acts of fraud.

In the Motion to Compel Discovery, Utica seeks discovery of BancInsure's fraud expert's ("Jason Ricciardi" or "Mr. Ricciardi") working files, in advance of his December 28, 2006 deposition. Utica states that BancInsure has agreed to produce the working files, but not prior to the morning of the deposition. Utica claims that producing Mr. Ricciardi's working files on the morning of the deposition will not provide counsel with sufficient time to address the issues the information contained in the files may raise.

In opposing the Motion, BancInsure states that Utica's request for Mr. Ricciardi's

working files is untimely and therefore it is under no legal obligation to comply.

After considering the issues, the Court will grant Utica's Motion. Mr. Ricciardi used the working documents at issue to form an opinion on the matter in this case. Thus, Utica should have the opportunity to review those documents prior to obtaining Mr. Ricciardi's deposition. Accordingly, the Court will order BancInsure to produce the working documents.

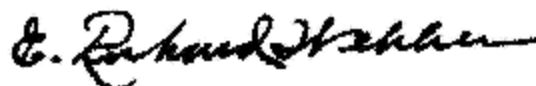
Mr. Ricciardi's working documents, used in connection with this case, shall be either transmitted by fax or shipped overnight by United States Postal Service, UPS or FedEx, or other similar overnight service, to St. Louis, to the office of BancInsure's counsel, Ms. Elaine Moss, (Brown and James, P.C. 1010 Market Street 20th Floor St. Louis, MO 63101) within **three (3) days** of this Court's order. The documents shall be transferred to the office of Utica's counsel, Ms. Martha Charepoo, (Husch and Eppenberger, LLC 190 Carondelet Plaza Suite 600 St. Louis, MO 63105) on or before December 21, 2006. The cost of copying and transmission shall be born by Utica.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Expedited Motion to Compel Discovery [doc. #48] is **GRANTED**. Defendant shall provide their fraud expert's, Mr. Jason Ricciardi, working documents to Plaintiff on or before **December 21, 2006**.

**IT IS FURTHER ORDERED** that Defendant's Motion for Protective Order [doc. #50] is **DENIED, as moot**.

Dated this 13th day of December, 2006.



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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE

